

Brownfields Study Group Meeting

October 25, 2002

Meeting Notes

I. Attendees

Sue Bangert, DNR
Margaret Brunette, DNR
Kathy Curtner, DNR
Margaret Earnest, TN & Associates
Darsi Foss, DNR
Matt Haessly, City of Milwaukee
Art Harrington, Godfrey & Kahn
Bruce Keyes, Foley & Lardner
Dan Kolberg, DNR
Dennis Lawton, STS Consultants, Ltd.
Peter McAvoy, 16th St. Community Health Center
Michael Prager, DNR
Andrew Savagian, DNR
John Stibal, City of West Allis
Sam Tobias, Fond du Lac County

Via Conference Call

Don Gallo, Reinhart, Boerner & Van Deuren
Peggy Lescrenier, Dept. of Commerce
Percy Mather, DNR
Kate Mawdsley, Dept. of Administration
Jessica Milz, DNR
Tom Mueller, TEMCO
Buck Sweeny, Michael Best & Friedrich

II. Welcome, Introduction, Agenda Repair

III. Current Financial Items

Andrew Savagian gave a brief overview behind the draft financial recommendations; worked with smaller subgroup of Study Group and other state representatives to draft initial recommendations (group included John Antaramian, Mueller, Stibal, Joy Stieglitz, and Darsi Foss from the DNR, Jason Scott and Joe Leo from Dept. of Commerce)

Savagian went over each draft financial recommendation for attendees to comment on and ask questions. The draft recommendations will be emailed to the Brownfields Study Group distribution list for comments and review before the November 22 meeting in Madison. After that, they will be included in a document (e.g. report, letter, etc.) the Study Group will submit to the State Legislature in December.

Modify negotiated sale in lieu of bidding for tax delinquent brownfields properties

***Attendees agreed with this recommendation; no discussion**

Assigning judgment of a tax deed without taking title

***Attendees agreed with this recommendation with some discussion**

Tom Mueller: Any of these done outside Milwaukee?

Dan Kolberg: No

Sam Tobias: We're about to put something together

Mueller: You mean a tax deed for Fond du Lac county?

Tobias: Yes

Strengthen and stabilize environmental revenues for brownfields

***Attendees agreed with this recommendation with some discussion**

***Question:** Should the Study Group recommend an increase in funding, or is maintaining the status quo the best option?

***Question:** Should the Study Group recommend again funding the SUDZ program and, if so, making changes to the funding criteria?

Kate Mawdsley: According to Kendra Bonderud, from the last budget, the moneys that were set aside for certain awards for the Menomonee Valley came from Dept. of Commerce out of the Environmental Fund; also, some money from gaming revenues was deposited into the environmental fund but was not specifically designated for the Valley

Darsi Foss: So the big question to Kate and Kendra is will brownfields programs be getting the same level of revenue they've been getting and how is that funding split up

Mawdsley: We're working on projections for what's available in this next budget as well as what's available for the longer term

Bruce Keyes: We may just want to try for status quo all around

John Stibal: I agree, I don't we want to rock that boat

Mueller: If we say we're going to have \$14M available for Commerce grants, there's also that \$1M that went to Kenosha that was non-competitive; so if we have a non-competitive situation we'd better say whether we're for or against that

Foss: Community-specific earmarks? Does the Study Group want to weigh in on non-competitive funding?

Savagian: Kate, do you know when you'll have some of that information available?

Mawdsley: We should have something in the next couple weeks for the next biennium; for future projections those may take a little longer

Mueller: One other thing to think about is what's the difference between the SUDZ program vs. money coming directly from the Commerce grant

Foss: That's from the same pot of money, but the Study Group did not recommend those earmarks; and the Study Group may want to make that a global recommendation

TASK: Brownfields Study Group will get an update from DOA and DNR (via email) on this issue in the next few weeks.

Dennis Lawton: in regards to the SUDZ funding, what significant, unique accomplishment has been attained?

Foss: I think what's been achieved is, for communities with projects that don't have what Commerce needs to rate it highly and get a grant, this money was helpful; these cities also were able to get more area-wide cleanup vs. property by property grants: Oshkosh used it's SUDZ funding to clean up a large area known as the Radford properties; in Milwaukee the funding helped enable the city to go ahead with acquisition of the CMC properties in the Valley; in Fond du Lac the funding allowed them to look at a whole host of projects they would not have considered before

Mueller: I'm definitely not against SUDZ, it may be the vehicle I suggest we use toward that funding; and where we can't be competitive this is the money we use it for

Art Harrington: When those grants are given out, if there's a TIF, can you make a stipulation that you can use the moneys you get back from a TIF as recoverable to the state?

Foss: No but you can put language in there to change that

Stibal: Usually a TIF will run out within 15 years minimum; after 15 years it's tough to get your city government to go beyond that; plus you're not taking about a huge pile of money anyway after the 15 years and you're asking them to pay it back, so a lot of government officials will say why do it in the first place

Harrington: What about a percentage of the recovered funds?

Stibal: I think that would be a good idea

Lawton: Are there projects out there that need this funding?

Foss: Could look at putting SUDZ into the future review in the spring

Keyes, Mueller: Yes, there are projects out there in still need of funding

Foss: We know of some candidates that are beyond the SAG stage, and some communities have multiple sites

Stibal: May want to add criteria to the non-gaming portion of SUDZ

Keyes: How are we agreeing to this?

Group agreed to move the SUDZ recommendation to the future funding proposals; however, the group also agreed to keep a recommendation of \$525,000 in the current proposals as a placeholder, without any earmarking language included.

Group agreed that maintaining the status quo funding levels for brownfields programs was the best option.

Stibal: The more I think about the TIF repayment, the more I like that idea

Harrington: Might be good politically because money is coming back

Keyes: If the money does come back, do we talk about where it goes?

Several members agreed that the group needs to talk about where that funding goes – perhaps a revolving fund

Harrington: If a community could take the SUDZ funding and tell the causer we have the ability to recover the costs, that may be a good tool in some cases

Michael Prager: Some states have brownfields grant programs where the state can pursue cost recovery after the grants are awarded; as opposed to saying you can't get it if there is a viable party who caused the contamination

Harrington: If you include the states, communities may not want to accept funds, because the state would need sign-offs to negotiate with the PRPs, and that might make them reluctant; but it could serve as great leverage with the PRP if there's something staring them in the face on cost recovery from the LGU

Clarify statutory authority and appropriation to create and operate a brownfields Revolving Loan Fund with grant funds from U.S. EPA. This fund could be used by a consortium of communities and/or the DNR

***Attendees agreed with this idea with some discussion**

Foss: EPA has three different pots of money available; we do have some general appropriations where the state can put those funds, but it would be better to clarify that there are specific locations for EPA Brownfields Revolving Loan Funds; other states have done that; for example, Illinois has gone together with other communities to create a pot of money; and this "consortium" wouldn't be mandatory

Foss: If DNR was to apply for an EPA grant, the state would need an account to receive that money; but it would be better to get a specific account; but do we want to broaden it to include other communities who apply for EPA BF Revolving Loan Funds and would like to give the money to DNR to administer on the community's behalf?

Stibal: Good idea; doesn't seem like a great task to administer but could be tough

Mueller: Would we use state administrative rules then or would this fall under federal rules?

Stibal: You'd still have to use EPA/fed rules, but they're a bit more flexible

Prager: You raise a good point, we'd need to discuss how to implement it, probably move that into the next round, under future financial issues

Potentially expand the definition of eligible applicants as it pertains to school districts eligible for the SAG, Greenspace and Land Recycling Loan Program (LRLP) funds.

*** Group agreed to work on this through internal DNR efforts and to take it up again for future consideration**

Stibal: It's not that I'm against this idea, but we're beginning to blur the lines; now cities and schools are both working on brownfields redevelopment plans, that to me doesn't really work

Prager: For the Green Space grant we're working with some schools about how to make this happen, but the details are sticky because the city has to incur the cost and do the match and they won't want to do that for the school

Foss: We agree philosophically, but implementation-wise it's very tough; so I think we're all moving into new territory here

Stibal: We do a number of things with the schools and give them money on lots of projects through the cooperative agreement process; if it could be done mechanically it shouldn't be a problem

Kathy Curtner: It's dangerous to decide to say you need a legislative or statutory stage based on an anomalous issue; I agree with John that you should be able to work it out but I don't know if you need to make a statutory change

Foss: Maybe we need to sit down with Cathy and the DNR attorneys to see what we can come up with; communities have good questions, but we just don't have the answers right now

Curtner: In the environmental loans we've done something with other LGU entities; there might be something there

Harrington: This is about building schools on contaminated property; I'm assuming it's all school related?

Stibal: Even if you just limit it to school sites; city is saying we want to focus on site X and the school board is saying focus on property Y, and you have competing interests

Harrington: And with the whole fiasco on revenue sharing, we could be raising a red flag we don't want to raise

Mueller: I agree with John, I can't believe there's a large amount of demand for SAG for schools

Foss: Yes, unfortunately there are some that have come in

Prager: The causer issue is also a problem for school projects applying for SAG funds

Peggy Lescrenier: We've also had a school inquire for Commerce grants

Stibal: We should take a look at the issue for Commerce about schools being eligible; it should apply to all grants

Modify Environmental Remediation Tax Incremental Financing (ER TIF)

***Attendees agreed with this recommendation with some discussion**

Harrington: How many ER TIFs are currently out there?

Prager: Three have applied; I think there are others in the works

Keyes: For a lot of these communities they're TIF'ed out

Prager: One is the Town of Madison, which can't create regular TIFs; New London is the other one and I think they're TIF'ed out; I don't know about the third one

Modify the Development Zone Tax Credit

***Attendees agreed with this recommendation with some discussion**

Savagian: Information on the Illinois tax credit program was handed out to attendees and Prager briefly went over it

Keyes: I found the Illinois program unwieldy; but the transfer part of this is good; it does sunset as of December 31; plus it's not tied to any geographic part of the state

Stibal: Should we recommend that it be more universal and be tied to the land?

Prager: I think the Study Group recommendations in the past cover that

Keyes: In order for us to couch this, talk about the changes we're recommending to be applied to the different tax zones as well as these

Lescrenier: If they leave that zone, they become ineligible and that we need to say they agree to do the work

Mueller: You have to spend them in order to get the money in the first place

Lescrenier: We really don't want the company to leave; plus they have to stay 5-7 years in the zone

Keyes: Company would like to have it, but they can't because they're just trying to get out of the business and the buyer doesn't want to do the cleanup

Stibal: You want to keep the company there, that's why that zone was designated

Lescrenier: DOR says selling the tax credit is not possible

Stibal: If we can keep the jobs there and sell the tax I think we all agree that's the best idea

Foss: Peggy how many of those special zones were created?

Lescrenier: You can do 10 enterprise development zones that included environmental remediation; I think we've done 2-3 to date; one in Sheboygan and one in Manitowoc and maybe one in Milwaukee

TASK: DNR will find someone at the Dept. of Revenue (DOR) to help answer some of these questions.

Streamline the Land Recycling Loan Program (LRLP)

***Attendees agreed with this recommendation with no discussion**

Target gaming revenue for Menomonee Valley brownfields redevelopment project funding

***Attendees agreed that DOA and DNR report back to the Study Group on the "health" of the revenue stream to the Environmental Fund, and whether or not the grants will have enough revenue**

Making all state brownfields appropriations continuing appropriations

***Attendees agreed with this recommendation with some discussion**

Tobias: You want to carry it over to the next biennium or you lose it?

Lescrenier: That's correct

TASK: DNR will email draft financial recommendations to Brownfields Study Group distribution list for comments and review before the November 22 meeting in Madison.

IV. Possible Future Financial Items

Savagian gave a brief overview on future financial issues; these issues will not go in the document the Study Group is preparing to submit to the State Legislature in December, but are for future discussion in the spring of 2003.

Create a state revolving loan fund for brownfields similar to the EPA model

Foss: Charlie Bartsch's summary is available; most people like the EPA revolving loan fund and SUDZ program; these programs offer a little more flexibility needed for multiple projects with several properties; Ohio has a Revolving Loan Fund; Michigan also has one; is this something communities could use in Wisconsin? And since we probably don't have new sources for BF programs coming in via state dollars, the Study Group may need to look at an existing state revenue source and redirect or expand its use

Foss briefly explained EPA's Revolving Loan program; communities can loan out up to 60% that must be paid back, with 40% granted out to LGU or non profit that owns the property, to be used only for clean up

Foss: Could the federal repayments to the Clean Water fund be used to create a State Brownfields Revolving Loan Fund?

Mueller: We'd like to see a little more usability for the funding on the loans; it's a great idea; even if it would strictly be a loan it would be a major tool that could be used in brownfields redevelopment

Stibal: How are we going to address the repayment to the CWF?

Curtner: We can use it but it has to be through the CWF; this looks like a different program for different purposes; maybe this is a question – create a different one or through CWF?

Foss: Right, we're not sure; could we grant it to the community or loan it?

Curtner: We'd have to look at the details

Stibal: Were we talking about having this program becoming a grant program?

Foss: We have some potential flexibility but it's tough to say

Stibal: Zero interest for the LRLP was a major breakthrough; but we want to protect the revenue stream to make sure this stays funded

Prager: The idea here is that this federal EPA money goes to LGUs so they can use it; Milwaukee has their own grant program to do investigation and assessment work

Matt Haessly: MEDC has a matching grant program; they'll match up to \$25,000 of a Phase II investigation; but it has to be for a redevelopment purpose

Prager: Indiana also has a partially forgivable loan program

Lescrenier: Will the state fund incorporate the economic development part of this?

Foss: That's up to this group

Lescrenier: Brownfield money should have a development component in it to help urban cities

Harrington: There are a range of other projects that communities want to use brownfields for. How do you establish economic development criteria for on this, for something like parks?

Lescrenier: I don't know, but it should include an economic development component

Explore the use of environmental insurance by other states

Prager: Start the process of getting information out there; Massachusetts has a subsidized environmental insurance program for developers as well as lenders; they have cost-cap coverage as well as pollution liability coverage that covers unknown and third party liability; also has the creditor-lender insurance

Prager: Massachusetts has a master state policy that AIG is the carrier for; have a 50% subsidy so the state covers half the premium, and it's already cheaper than it would individually; the one that's the most expensive is the cost cap; they also have fairly significant self insured retention; for example, if a project's cleanup costs are \$200-300,000 for a \$300,000 policy, the policy

would cost \$56,000, subject to a 35% self-insured retention and the state pays for half of the premium

Harrington: I think it's good to get a group rate for that narrow risk

Prager: Their program has been used fairly broadly

Harrington: A 35% retention does not excite me; it appears that this risk makes the underwriter nervous

Mueller: We got such reasonable rates because they were very comfortable with our VPLE process

Harrington: I think that same thing applies in the interim liability process

Meuller: Maybe we recommend that for something expanded beyond the VPLE insurance that they are a part of VPLE

Margaret Brunette: I don't know if they have to be part of VPLE, they could do it through DNR review and oversight; don't want to rush into VPLE if that's not right for them

Harrington: It would be great if somebody came in and told us about underwriting for this type of risk, and if it would help reduce cost; this may be worthwhile when we're trying to get a group rate on a defined risk statewide

Harrington: There are tremendous transaction costs for each of these carriers to come in; so you need a certain number to reach critical mass; you'd get a much better price with these carriers

Mueller and Stibal: Agree with Art, you could obtain quite a savings without subsidizing anything

Foss: We use some of EPA's money for insurance as well to pay for those costs

Harrington: VPLE doesn't even cover third party

Prager: Is the third party something people are concerned about; are people insuring this now?

Harrington: Both third party and unknowns; if we had a master policy dealing with a voluntary party program you'd probably get a decent program

Stibal: We might want to start at VPLE but like Margaret said you could go beyond that

Prager: California's FAIR program is similar to Massachusetts and modeled after it; it also has subsidies

Harrington: A presentation by someone who understands a mass program across the state and what the savings are and identify the risks is a good idea

Stibal: We could bring in the one that worked with the Quadgraphics site in West Allis

Harrington: I think this is huge opportunity, especially with staffing and budget issues at the state level as they are, people are going to look toward private contractors with insurance secured; with the Kenosha site as an example – we talked to DNR a lot on the hazardous waste issues and got bogged down; then we contracted with TRC and they said they'd take all the risk for a contracted, set fee; they agreed to take down all the buildings and heavily negotiated a standard AIG policy; for a \$10 million flat fee they took on all the risk; AIG was comfortable with TRC and vice versa because they've worked together before

Brunette: RPs are finding this very lucrative

Lawton: Yes, we see it more and more

TASK: DNR will work on getting someone to present to the Study Group on the insurance issue.

Other State Initiatives

Foss: Massachusetts had a \$10 million bond issue for demolition and asbestos and tank removals that was tied to blight; in Wisconsin, we have large SAG grants tied to demolition and asbestos and is an oversubscribed part of SAG

Brunette: SAG says you need to tie the asbestos issue to demo, so if you just wanted to rehab the building you couldn't use it for that

Foss: There are several issues here to think about, so please take a look at these items

V. Updates On Other Subgroups

Contaminated Sediments/Urban Riverways Initiative

Group briefly discussed this issue, but principle individuals were absent so group did not discuss it at length

Harrington: The federal approach under purchaser-protection; if you do investigation and work, you get exemption, bona-fide; is that true? If so we could do that just for sediments

Foss: That's correct; if you do your due diligence and you do Phase I and II, you will be held harmless/exempt, and you could still buy it

Harrington: That's a different charge for this group; but maybe could get a focused exemption on this issue; and now you have the federal model

Savagian: So there's an internal, technical committee?

Brunette: Yes, I'm on that committee and we meet quarterly; it's in the Water Division, but have representation from the Remediation and Redevelopment Program

Harrington: There was an external committee, but that's sort of gone by the boards; it last met a year or longer ago; this is a very contentious issue

Bangert: The Wisconsin Commercial Ports Association works with the DNR; perhaps they could come back to the group with updates about what's going on; they are interested in making sure the DNR process is clearly understood and fairly seamless because there are a lot of different groups involved in management and disposal of sediments

Brunette: Dredging for cleanup vs. dredging for navigation is a distinction we need to keep in mind

Group agreed to revisit this issue to see how it fits into the Study Groups purpose/goals.

EPA Region V & One Cleanup Initiative update

***DNR will get the Study Group a summary of what EPA has come up with**

Regional implementation of Study Group model

***Put on hold for now**

VI. Other Updates

Non-fiscal policy items

Foss briefly mentioned that the VPLE and off-site issues are included in the DNR's budget submittal

SAG policy issue

***Attendees agreed that SAG issues, including changing the 70-30 split on grants, should be worked on administratively as the rule is revised**

Institutional Controls

Foss gave a brief overview of DNR's budget proposal. The DNR is proposing statutory language to clarify its authority to place and enforce deed restrictions

Foss: Indiana has "Cap Cops," to see if the remedies are still working and parties are following the rules; when they hired their LTE in Indiana, this person found all sorts of gaps in the program; New Jersey also has something like this; institutional controls is a part of our program that we haven't focused on as a state

Keyes: Do we know how many were maintaining their caps?

Foss: No, but we could talk to Peggy Dorsey and get more information about their program

Prager: New Jersey did find some problems with caps

Foss: Also, Pennsylvania's Guardian Trust Program – this entity would take over the responsibility for maintaining the institutional controls and engineering controls, and make sure they are watchdogging these sites; the idea is that it would be funded through closure fees and go into a pot so that insurance would be available

Prager: We could also provide more information on that

Foss: We have 18,000 closed sites in Wisconsin; are the soil covers and caps still there and working?

Mueller: Don't want to be a solution looking for a problem

Peter McAvoy: I think this is becoming a growing problem and looking for tools to deal with these long-term problems is only going to grow

Prager: Nationally, this is a big issue as more and more sites get closed out

Hazardous Waste/Streamlining

Foss and Bangert: Mark Gordon and John Melby facilitated a meeting on October 10 for the Study Group; was lightly attended, but did receive some comments, and are now incorporating final comments and fine tuning; we hope to have training with staff with FINAL guidance in December/January

Prager: If there are any final comments can folks still get back to Mark and John?

Bangert: Yes, you can still make comments, that's why we didn't have a final stamp on it until after training, because staff will come up with additional comments as well

Harrington: I really appreciate the incorporation of comments on burden of proof for the listing issue; that was a helpful clarification

Lawton: At the NR 700 Focus Group meeting, Mark Gordon was interested in training with videoconferencing or web-based training for the public

Keyes: I think we all agree that, while this was a lengthy process for not a lot of sites, when this does become an issue it becomes a BIG issue

Federal brownfields legislation, guidance and funding

Foss: Applications for initial proposals to Region V and HQ is Dec. 16; there is \$150 million nationwide; DNR staff met with Fond du Lac county and Kenosha and we'd be happy to talk to you or help you contact EPA for more information; tribes are also eligible; in addition, \$50 million will be available in the spring

Adjourn